IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Indian Asthama Care Society & Another Vs. State of Rajasthan & Others
(D.B. Civil Writ Petition No.1966/2003)

2. Mam Raj Singh Choudhary Vs. State of Rajasthan
(D.B. Civil Letter Petition No.3708/2003 PIL)

3. Suhas Singh Bhadoria Vs. State of Rajasthan
(D.B. Civil Letter Petition No.7590/2002 PIL)

D. B. Civil writ Petitions under Article 226 of the Constitution of India.

Date of Judgment: August 29, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. G.S.Bapna] for the petitioners.
Mr. N.R.Saran]

Mr. G.S.Gill, Addl. Advocate General for the State.

Mr. Pancham Surana, for respondent.
Ms. Suman Sharma] for Times of India.
Mr. B.N.Sandhu]

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Finding sachets of Gutkha, Tobacco and Pan Masala lying scattered at public places, the petitioners have approached this Court with the request to invoke `The Pollutor pays Principle' and impose fine on the manufacturers of Gutkha, Tobacco and Pan Masala.

2. The “pollutor pays principle” implies that the absolute liability

to harm the environment extends upon the pollutor not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. The principle provides that where the environment has been damaged/ degraded on account of pollution, the pollutor would be liable to compensate the individual sufferers and to pay the cost of restoring the damaged ecology.

3. It is urged on behalf of the petitioners that sachets are made of plastic which is one of the major toxic pollutants, therefore the respondents No.3to15 and other manufacturers of Gutkha, Tobacco and Pan Masala should be restrained from selling their products in sachets. The contention of respondents No.3to15 however is that no pollution is being caused by the sachets.

4. Having given our anxious consideration to the rival submissions we are of the view that before issuing any direction as sought by the petitioners, the question whether the sachets poison and pollute the natural resources and the environment needs to be examined by experts.

5. Undoubtedly plastic plays the villain right from the stage of its production. The major chemicals that go into the making of plastic are highly toxic and pose serious threat to living beings of all species on earth. Some of the Constituents of plastic such as benzene and vinyle chloride are known to cause cancer, while many others are gases and liquid hydrocarbons that vitiate earth and air. Plastic resins themselves are flammable and have contributed considerably to several accidents worldwide. Like in the case of all other chemical substances `disposal' of plastic is a myth. Once plastic is

produced, the harm is done once and for all. Plastic defies any kind of attempt at disposal – be it through recycling, burning or landfilling. Since plastic does not undergo bacterial decomposition, landfilling using plastic would mean preserving the poison forever when burned, plastic releases a host of poisonous chemicals into the air, including dioxin, the most toxic substance known to science. Recycling of plastic is associated with skin and respiratory problems, resulting from exposure to and inhalation of toxic fumes, especially hydrocarbons and residues released during the process. What is worse, the recycled plastic degrades in quality and necessitates the production of more new plastic to make the original product. Plastic waste clog the drains and thus hit especially urban sewage systems. The plastic waste being dumped into rivers, streams and seas contaminate the water, soil, marine life and also the very air we breathe. Choked drains provide excellent breeding grounds for disease causing mosquitoes besides causing flooding during the monsoons. Any attempt to get rid of plastic through landfills is also dangerous. Apart from toxic seepage from the landfill resulting in the contamination of precious water sources, the waste mass impedes the flow of ground water as well and obstructs the movement of roots – thereby badly affecting the soil's biological balance and organic process. Landfills are also prone to leaks. The wastes – especially cadmium and lead in the wastes – invariably mix with rain water, then seep through the ground and drain into nearby streams and lakes and other water bodies. Thus the water get poisoned.

6. QUICK FACTS ON PLASTIC POLLUTION:

- A plastic milk jug takes 1 million years to decompose.
- A plastic cup can take 5-80 years to decompose.

- Plastic bags and other plastic garbage thrown into the ocean kill as many 1 million sea creatures every year.
- By discarding plastic thoughtlessly, especially fishing gear and packaging people are accidentally causing the deaths of millions of mammals, birds, reptiles and fish every year.

7. The problem of plastic pollution is serious. Public nuisance, because of plastic pollution to the detriment of the people, is a challenge to the social justice component of the rule of law.

8. It is well settled that all human beings have the fundamental right to unpolluted environment, pollution free water and air. The State is obliged to preserve and protect the environment. It is mandatory for the State and its agencies to conceive, anticipate, prevent and attack the causes of environmental degradations.

9. Keeping in view the aforesaid considerations, we direct as follows:-

(i) The Chief Secretary, State of Rajasthan, within two months from today, shall get the sachets of Gutkha, Tobacco and Pan Masala (sold and consumed in Rajasthan) examined by Forensic Science Laboratory and to enquire as to whether sachets contain plastic material.

(ii) If the FSL report discloses that the sachets contain plastic material, the respondents No.3to15 and other manufacturers shall pay pollution fine to the Chief Secretary as follows:-

Turn over of unit for the period from 1-4-2006 to 31-3-2007	Amount of fine
Upto Rs.1,00,000/-	Rs. 30,000/-
Between Rs.1,00,000/- and 3,00,000/-	Rs. 60,000/-
Between Rs.3,00,000/- and 10,00,000/-	Rs. 1,50,000/-
Between Rs.10,00,000/- and 50,00,000/-	Rs. 7,00,000/-

Between Rs.50,00,000/- and Rs.1 Crore and more	Rs.12,00,000/-

(iii)The respondents No.3to15 and other manufacturers of Gutkha, Tobacco and Pan Masala are restrained from using plastic material in the sachets of Gutkha, Tobacco and Pan Masala.

(iv) The respondents No.3to15 and other manufacturers shall comply in letter and spirit the provisions contained in the Cigarettes and Other Tobacco Products (Prohibition Advertisements and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 which came into force w.e.f. February 11, 2007.

(v) There shall be no order as to costs.

(vi) The writ petitions stand disposed of as indicated above.

(vii) A copy of this order shall be transmitted to the Chief Secretary, for compliance.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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